Report to the Auburn City Council

Action Item

Agenda Item No. 3

City Manager's Approval

To:	Mayor and City Council Members
From:	Patrick Clark, Consultant, through Richard Ramirez, Interim City Manager
Date:	April 28, 2014
Subject:	Employer – Employee Relations Resolution

BACKGROUND

The Meyers-Milias-Brown Act (MMBA) is the collective bargaining law that governs the labor-management relations in California local government, including cities, counties, and most special districts. The MMBA authorizes the City to adopt reasonable procedures for the administration of employer-employee relations between the City and its employees and employee organizations. These procedures are currently contained in the City's Employer-Employee Relations Policy (EERP).

The MMBA has been amended since the adoption of the current EERP. The proposed Employer-Employee Relations Resolution (EERR) contains updates to be consistent with the Meyers-Milias-Brown Act.

Additionally, in the interest of government transparency, the new EERR contains a new "transparency in bargaining" procedure for Council consideration, similar to that adopted in the City of Chico and by some other cities and counties. The intent is to provide greater transparency in the collective bargaining process by doing the following:

1. Initial proposals from the City and each bargaining unit will be available for public review along with a fiscal analysis of each initial proposal. All negotiations thereafter would continue in confidence.

2. When the meet and confer process is concluded between the City representatives and an Exclusively Recognized Employee Organization (i.e., labor union or association), all matters agreed upon shall be incorporated in a written memorandum of understanding (MOU). The MOU itself, combined with a comprehensive fiscal analysis of the proposed MOU, shall be available for public review for a minimum of two weeks prior to the City Council taking action at an open public meeting.

SUMMARY

The revision process for the attached EERR began over a year ago on April 18, 2013. All bargaining units have had the opportunity to meet with City representatives or otherwise address their concerns with the proposed EERR. The only outstanding area in dispute is the Transparency in Bargaining provision. The only bargaining unit articulating a concern is the APOA.

DETAIL

City representatives met with staff from the law firm Mastagni, Holstedt, Amick, Miller & Johnson representing the Auburn Police Association (APOA), the Auburn Public Safety Association (APSA – non-sworn) and the Auburn Employees' Association (AEA). The parties met to discuss the proposed EERR including the proposed transparency in bargaining procedure and agreed to several language changes. The parties were unable, however, to develop a consensus on the transparency in bargaining provisions.

APOA: Mr. Howell argues in an April 23, 2014 email that the provisions of the transparency in bargaining procedure are "a permissive subject of bargaining and is therefore not subject to meet and confer or imposition after impasse". He had previously taken the position that this was a subject of bargaining. In his April 23, 2014 email, Mr. Howell further requests mediation through the State Mediation and Conciliation Service to seek agreement but does so while maintaining the argument that the Transparency in Bargaining provisions are a permissive subject of bargaining and therefore can never be a part of the EERR.

APSA (non-sworn) Mr. Howell indicates that he has been unable to reach anyone from the Auburn Public Safety Association and thus we have no response from the APSA to our March 17 and more recent requests for a final meeting to resolve this issue (i.e., an "impasse meeting").

AEA Mr. Howell indicates that he has been unable to reach anyone from the Auburn Employees' Association and thus we have no response from AEA to those requests.

IAFF The International Association of Fire Fighters met with City representatives and have indicated that they are in agreement with the provisions of the proposed EERR.

CHEA The City Hall Employees' Association provided comment to City representatives and revisions were made to the proposed EERR to address their concerns.

No other City units have responded to the City notice indicating any concerns with the proposed EERR.

Options

1. Direct staff to go through the optional mediation process with the APOA in an effort to reach agreement regarding the Transparency in Bargaining provisions of the EERR;
2. Adopt the attached EERR;
3. Adopt the attached EERR without the Transparency in Bargaining provisions;
4. Maintain the Status quo; and,
5. Adopt a proposal with such other changes as the City Council directs.

Recommendation:

Carefully review options and provide staff with appropriate direction.

RESOLUTION NO.___

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, CALIFORNIA REPEALING THE CITY'S EXISTING EMPLOYER-EMPLOYEE RELATIONS POLICY AND PROVIDING REVISED ORDERLY PROCEDURES FOR THE ADMINISTRATION OF EMPLOYER-EMPLOYEE RELATIONS BETWEEN THE CITY AND ITS EMPLOYEES AND EMPLOYEE ORGANIZATIONS

WHEREAS, the Meyers-Milias-Brown Act (Government Code Section 3500, et seq.) authorizes the City to adopt reasonable and orderly procedures for the administration of employer-employee relations between the City and its employees and employee organizations; and

WHEREAS, on July 12, 2010, pursuant to its authority under Government Code Section 3507, the City adopted the "City of Auburn Employer-Employee Relations Policy" (EERP); and

WHEREAS, since the adoption of the EERP, the Meyers-Milias-Brown Act has been amended, but the EERP has not been similarly updated; and

WHEREAS, in the interest of government transparency, the City Council in late 2012 directed staff to bring back a "transparency in bargaining" procedure for Council consideration, similar to that adopted in the City of Chico and other communities, to provide greater transparency in the collective bargaining process and thereby aid in managing community expectations as to service levels and their costs; and

WHEREAS, the proposed "transparency in bargaining" procedure would require initial proposals of the City and a bargaining unit and fiscal analyses of those initial proposals to be available for public review, but all negotiations thereafter would continue in confidence until final agreement is reached at which time the final agreement would be made available for public review before City Council considers adopting it; and

WHEREAS, to apply the "transparency in bargaining" procedure uniformly, it is reasonable to include it as part of the existing collective bargaining provisions of the EERP along with the other proposed updates to the EERP to reflect amendments to the Meyers-Milias-Brown Act; and

WHEREAS, the proposed "transparency in bargaining" procedure is important to allow the City and its bargaining units to disclose the fiscal impacts of bargaining

proposals on the services the City and its employees provide to the community, including the labor costs of such services; and

WHEREAS, the proposed "transparency in bargaining" procedure does not implicate mandatory subjects of bargaining (e.g., wages, hours and terms and conditions of employment) and is therefore, not a negotiable policy; and

WHEREAS, the City, without waiving its right to implement the "transparency in bargaining" provision of the updated EERP, indicated its willingness to meet with its bargaining units since April 2013 to discuss its proposed changes to the EERP (including the "transparency in bargaining" policy) in an effort to identify any reasonably foreseeable effects the proposed updates might have on wages, hours and terms and conditions of employment, and to negotiate any such impacts; and

WHEREAS, on January 13, 2014, the City and the Auburn Police Officers Association ("APOA"), the Auburn Public Safety Association, the Auburn Employees Association , met to discuss the proposed updates to the EERP— including the proposed transparency in bargaining procedure and agreed to several changes to the proposed updated EERR; and

WHEREAS, the City also had informal discussions via email and otherwise with the International Association of Firefighters, the City Hall Employees Association and the bargaining unit for mid-management employees, and offered to engage in discussions with all units; and

WHEREAS, during the January 13, 2014 meeting and subsequent discussions between the APOA legal representative and the City, the parties resolved all concerns raised by the bargaining units except those regarding the "transparency in bargaining" procedure and, as to that provision, no bargaining unit identified any reasonably foreseeable effects on wages, hours and terms and conditions of employment, in particular the City is informed that the International Association of Fire Fighters and the City Hall Employees Association have no remaining concerns with the proposed EERR and no other City units not referenced in this Resolution identified any concerns with the proposed EERR; and

WHEREAS, the City Attorney conferred with legal counsel for the units presents at the January 13, 2014 meeting by letter and email in further attempts to clarify those units' position regarding any reasonably foreseeable effects of the transparency in bargaining procedure; and

WHEREAS, on March 26, 2014, the City Attorney and the APOA legal representative exchanged email confirming that neither party had changed its position since the "transparency in bargaining" procedure was proposed in April 2013, and that the APOA's legal representative viewed the "transparency in bargaining" policy to be a negotiable "ground rule" to bargaining, rather than an appropriate provision of the EERR; and

WHEREAS, on March 27, 2014, the City's representative, without waiving the City's position that the "transparency in bargaining" procedure is a non-negotiable management policy, requested an impasse meeting consistent with the existing EERP procedures to discuss the parties' differences regarding any reasonably foreseeable effects of the proposed "transparency in bargaining" procedure on wages, hours or terms and conditions of employment and in further effort to resolve the issue; and

WHEREAS, on April 17, 2014, the City's representative, sent a follow-up request for an impasse meeting; and

WHEREAS, on April 23, 2014, nearly four weeks after the initial request to meet to attempt to resolve the impasse, legal counsel for the units which participated in the January 13, 2014 meeting clarified his position that the "transparency in bargaining" procedure is a "permissive" subject of bargaining which is not subject to meet and confer or impasse procedures, but must be negotiated with each individual bargaining unit as "ground rules" prior to each negotiation for a new or amended Memorandum of Understanding; he also stated that he had not been able to reach the APSA or the AEA and could not provide a response to the City's requests of March 27 and April 17 on behalf of those units; and

WHEREAS, on April 23, 2014, after more than a year's notice to all bargaining units of the proposed "transparency in bargaining" procedure and invitation to meet to discuss the procedure and, if applicable, meet and confer over any reasonably foreseeable effects of the procedure on wages, hours or terms and conditions of employment, and there being no reasonably foreseeable effects identified during this process, voluntary negotiations between the parties ceased.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF AUBURN, CALIFORNIA, that:

1. The provisions set forth in the attached Exhibit A are adopted pursuant to Government Code Section 3507 to ensure a uniform and equitable basis for employer and employee relations.

2. The Employer-Employee Relations Resolution adopted on July 12, 2010 and every prior version of that policy are hereby repealed in their entireties and superseded by this Resolution.

3. Nothing in this Resolution shall be construed to deny to any person, employee, organization, the City or any authorized officer, body or other representative of the City, the rights, powers and authority granted by federal or state law.

4. No provision of this Resolution or the application of such provision to any person or circumstance shall be held invalid except by the final decision of a court of competent jurisdiction. In the event of such an invalidating decision, the remainder of this Resolution, or its application to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

PASSED, APPROVED AND ADOPTED, this 28th day of April 2014.

_____

Bridget Powers
Mayor

ATTEST:

_____

Stephanie Snyder
City Clerk

I, Stephanie Snyder, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular meeting of the Council of the City of Auburn held on April 28, 2014 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

_____

Stephanie Snyder
City Clerk

City of

Auburn

EMPLOYER-EMPLOYEE RELATIONS POLICY

Adopted by Resolution No. _____
April 28, 2014

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EMPLOYER-EMPLOYEE RELATIONS RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUBURN, that the following provisions are adopted pursuant to Government Code Section 3507 to ensure a uniform and equitable basis for employer and employee relations:

ARTICLE I - GENERAL PROVISIONS

SECTION 1.0 Statement of Purpose

A. This Resolution implements Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 et seq.), the Meyers-Milias-Brown Act, by providing orderly procedures for the administration of employer-employee relations between the City and its employees. This Resolution supersedes all previous employer-employee relations resolutions and policies that conflict with this Resolution. This Resolution is intended to strengthen the administration of the City's employer-employee relations through the establishment of uniform and orderly methods of communications between employees, Employee Organizations and the City.

B. It is the purpose of this Resolution to provide procedures for meeting and conferring in good faith with Exclusively Recognized Employee Organizations regarding matters that directly affect and primarily involve the wages, hours and other terms and conditions of employment of employees in appropriate units and that are not preempted by Federal or State law. However, nothing herein shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy, which include among others: The exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other lawful reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; determine the time and hours of operation of City services; approve policies, goals and objectives; determine staffing patterns and the number and kinds of personnel required; build, move or modify facilities; determine the methods of raising revenue; contract out work; take action on any matter in the event of an emergency; and exercise complete control and discretion over its organization and the technology of performing its work; and the exercise of the foregoing powers, rights, authorities, duties, and responsibilities of the City and its adoption of reasonable policies, rules, regulations and practices in furtherance thereof shall not be limited, except to the extent required by law or applicable agreement to which the City is a party.

C. It is also the purpose of this Resolution to respect the rights of Employees, including their rights to form, join and participate in the activities of Employee Organizations of their own choosing for the purpose of representation in all employer-employee relations matters. Employees also have the right to abstain from joining or participating in the activities of Employee Organizations and have the right to represent themselves individually in their employment relations with the City. As required by applicable law, no Employee shall be interfered with, intimidated, restrained, coerced or discriminated against by the City or by any

Employee Organization because of his or her exercise of these rights. In addition, employees have additional rights as may be granted to them by Chapter 31 of the Auburn Municipal Code and by any memorandum of understanding which may be entered into by the City and an Exclusively Recognized Employee Organization.

SECTION 2.0 Definitions

As used in this Resolution, the following terms shall have the meanings indicated:

A. "Appropriate Unit" means a unit of employee classes or positions, established pursuant to Article II hereof.

B. "City" means the City of Auburn, and, where appropriate herein, refers to the City Council or any duly authorized City representative.

C. "Confidential Employee" means an employee who has been appointed by the City Manager or designee, and who, in the course of his or her duties, has access to confidential information relating to the City's administration of employer-employee relations that may be used in "closed session" of the City Council, or for purposes of negotiation, or in preparation of the City's bargaining position for an MOU with an Exclusively Recognized Employee Organization.

D. "Consult" and "Consultation in Good Faith" means to communicate orally or in writing for the purpose of presenting and obtaining views or advising of intended actions; and, as distinguished from meeting and conferring in good faith regarding matters within the scope of the duty to meet and confer, does not involve an exchange of proposals and counterproposals with an Exclusively Recognized Employee Organization in an endeavor to reach agreement in the form of a Memorandum of Understanding, nor is it subject to Article IV (Impasse Procedures) hereof.

E. "Day" means calendar day unless expressly stated otherwise.

F. "Employee" means any employee of the City subject to the Personnel Ordinance of the City pursuant to Auburn Municipal Code § 31.058.

G. "Employee, professional" means any employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including but not limited to attorneys, physicians, registered nurses, engineers, architects, teachers and various physical, chemical and biological scientists.

H. "Employee Organization" means a bona fide organization of any legal form that has, as one of its primary purposes, representing employees in their employment relations with the City that has no restriction on membership based on race, color, creed, sex, national origin, age, or physical disability or any other unlawful basis.

I. "Employee Relations Officer" means the City Manager or his/her duly authorized representative.

J. "Exclusively Recognized Employee Organization" means an Employee Organization which has been formally acknowledged by the City as the sole Employee Organization representing the employees in an Appropriate Unit pursuant to Article II (Representation Proceedings) hereof, having the exclusive right to meet and confer with the City in good faith concerning statutorily required subjects pertaining to unit employees, and thereby assuming the corresponding obligation to fairly represent such employees.

K. "Fact-finding panel" means an informal panel of individuals convened to hear evidence on negotiations on matters to be included in a Memorandum of Understanding which are in dispute between the City and an Exclusively Recognized Employee Organization. A fact-finding panel shall consist of three members: one selected by the City, another by the Exclusively Recognized Employee Organization and a chairperson selected either by mutual agreement of the City and Exclusively Recognized Employee Organization or by the Public Employment Relations Board as provided in Sec. 20 of this EERR below.

L. "Impasse" means that the representatives of the City and an Exclusively Recognized Employee Organization have reached a point in their meeting and conferring in good faith at which their differences on matters to be included in a Memorandum of Understanding as to which they are required to meet and confer remain so substantial and prolonged, as indicated by the submission of a "last, best, and final offer" from either party to the other, that further meeting and conferring would be futile.

M. "Management Employee" means an employee having responsibility for formulating, administering or managing the implementation of City policies and programs.

N. "Proof of Employee Support" means (1) an authorization card recently signed and personally dated by an employee, or (2) a verified authorization petition recently signed and personally dated by one or more employees, or (3) employee dues deduction authorization signed and personally dated by an employee, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that multiple dues deduction authorizations bearing the same date for more than one Employee Organization for the account of any one employee shall not be considered as proof of employee support for any Employee Organization. The only authorization which shall be considered as proof of employee support hereunder shall be the authorization most recently signed by an employee. The words "recently signed" shall mean within one hundred eighty (180) days prior to the filing of a petition.

O. "Overlapping Unit" means a unit claimed to be an Appropriate Unit which includes some but not all the classifications or positions in a unit claimed to be an Appropriate Unit by a recognition petition filed by an Employee Organization seeking recognition as an Exclusively Recognized Employee Organization.

P. "Supervisory Employee" means any employee having authority, in the interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action if, in connection with the foregoing, the exercise

of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment subject to appropriate administrative review for legal and policy considerations.

Q. "Meet and confer in good faith" means performance by duly authorized City representatives and an Exclusively Recognized Employee Organization of their mutual obligation to meet promptly upon request by either party and at reasonable times and to confer in good faith regarding matters within the scope of representation in an effort to reach agreement on:

1. Matters within the scope of representation prior to the adoption by the City of its final budget for the ensuing year; and

2. What will be recommended to the City Council on matters within the decision-making authority of the City Council. This does not require either party to agree to a proposal or to make a concession.

ARTICLE II - REPRESENTATION PROCEEDINGS

SECTION 3.0 Recognition By "Card Check"

Consistent with Government Code sections 3507(b) and 3507.1(c), the City shall grant exclusive or majority recognition to an Employee Organization based on a signed petition, authorization cards or union membership cards showing that a majority of the employees in an Appropriate Unit wish to be represented by that Employee Organization ("card check"), unless another Employee Organization has within the past twelve months been lawfully recognized as the exclusive or majority representative of all or part of the same unit.

A. For purposes of this section, exclusive or majority representation shall be determined by a neutral third party selected upon agreement of the City and the Employee Organization or, failing agreement, the determination shall be made by the State Mediation and Conciliation Service, in accordance with Government Code Section 3507.1(c). Within five (5) business days of an Employee Organization claiming exclusive or majority status based on card check, the Employee Organization and the City shall mutually agree on a neutral third party who shall review the petition, authorization cards or union membership cards to verify the exclusive or majority status of the Employee Organization.

B. If the neutral third party determines, based on a signed petition, authorization cards or union membership cards that one or more competing Employee Organization(s) has or have the support of at least 30 percent of employees in the unit in which recognition is sought, the neutral third party shall order an election to establish which labor organization, if any, has majority status. The election shall be conducted consistently with Section 7.0 of this EERR.

SECTION 4.0 Filing of Recognition Petition by Employee Organization

As an alternative to the procedure described in Section 3.0, an Employee Organization that seeks to be formally acknowledged as the Exclusively Recognized Employee Organization representing the employees in an Appropriate Unit may file a petition with the Employee Relations Officer containing the following:

A. Name and address of the Employee Organization.

B. Names and titles of its officers.

C. Names of representatives who are authorized to speak on behalf of the organization.

D. A statement that the Employee Organization has, as one of its primary purposes, representing employees in their employment relations with the City.

E. A statement whether the Employee Organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national or international organization, and, if so, the name and address of each such other organization.

F. Certified copies of the Employee Organization's constitution and bylaws, if any.

G. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the Employee Organization for any purpose.

H. A statement that the Employee Organization has no restriction on membership based on race, color, creed, sex, national origin, age, or physical disability or other restriction prohibited by law.

I. The job classifications or position titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.

J. A statement that the Employee Organization has in its possession Proof of Employee Support to establish that thirty percent (30%) of the employees in the unit claimed to be appropriate have designated the Employee Organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the Employee Relations Officer.

K. A request that the Employee Relations Officer formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate.

L. The Petition, including the Proof of Employee Support and all accompanying documentation, shall be declared to be true, correct and complete, under penalty under

the law of the State of California, by the duly authorized officer(s) of the Employee Organization executing it.

SECTION 5.0 City Response to Recognition Petition

Upon the receipt of a Petition as described in Section 4.0, the Employee Relations Officer shall determine whether:

A. There has been compliance with the requirements of this Resolution regarding the recognition petition, and

B. The unit claimed to be appropriate is an Appropriate Unit in accordance with Sec. 9 of this Article II.

If the Employee Relations Officer determines these two conditions are met, he/she shall so inform the petitioning Employee Organization, shall give written notice of such request for recognition to the employees in the unit, and shall take no action on said request for thirty (30) days thereafter. If the Employee Relations Officer determines that either of the foregoing conditions is not met, he/she shall offer to consult with the petitioning Employee Organization regarding his/her determination and, if such determination remains unchanged after such consultation, he/she shall inform that organization in writing of the reasons for his/her determination. The petitioning Employee Organization may appeal such determination in accordance with Sec. 11 of this Article II.

SECTION 6.0 Open Period for Filing Challenging Petition

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other Employee Organization may file a competing request to be formally acknowledged as the exclusively recognized Employee Organization of the employees in the same or in an Overlapping Unit, by filing a petition evidencing Proof of Employee Support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Sec. 4 of this Article II. If such a challenging petition seeks establishment of an Overlapping Unit, the Employee Relations Officer shall call a hearing on the competing petitions for the purpose of ascertaining the Appropriate Unit, at which time the petitioning Employee Organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the Appropriate Unit or Appropriate Units pursuant to Sec. 9 of this Article II and give notice to the petitioning Employee Organizations of that determination. The petitioning Employee Organizations shall have fifteen (15) days from the date of receipt of that notice to amend their petitions to conform to that determination or to appeal that determination pursuant to Sec. 11 of this Article II.

SECTION 7.0 Election Procedure After Filing of Recognition Petition

A. The Employee Relations Officer shall arrange for a secret ballot election to be conducted by a party agreed to by the Employee Relations Officer and the concerned Employee Organization(s), in accordance with this Resolution. In the event that the parties are unable to agree on a third party to conduct an election, the election shall be conducted by the California State Mediation and Conciliation Service. All Employee Organizations which have submitted petitions determined to be in conformance with this Article II shall be included on the ballot. The ballot shall also offer employees the choice of representing themselves individually in their employment relations with the City under the label "no exclusive bargaining agent" or some other label determined by the party conducting the election. Any costs of conducting elections shall be borne in equal shares by the City and by each Employee Organization appearing on the ballot.

B. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the Appropriate Unit during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same Appropriate Unit on the date the election commences.

C. An Employee Organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated Appropriate Unit following an election or run-off election if it received a majority of all valid votes cast in the election. In an election involving three or more choices in which none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.

D. There shall be no more than one valid election in a 12-month period affecting the same Appropriate Unit except in the case of a run-off as described in paragraph C. above.

SECTION 8.0 Procedure for Decertification of Exclusively Recognized Employee Organization

A. A decertification petition alleging that an Exclusively Recognized Employee Organization no longer represents a majority of the employees in an Appropriate Unit may be filed with the Employee Relations Officer.

B. A decertification petition may be filed by two or more employees or their representative, or an Employee Organization, and shall contain the following declared to be true, correct and complete by the duly authorized signatory under penalty of perjury under the laws of the State of California:

1. The name, address and telephone number of the petitioner and not more than two designated representatives authorized to receive notices or requests for further information.

2. The name of the Appropriate Unit and of the Exclusively Recognized Employee Organization sought to be decertified as the representative of that unit.

3. An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the Appropriate Unit, and any other relevant and material facts relating thereto.

4. Proof of Employee Support demonstrating that at least thirty (30) percent of the employees in the Appropriate Unit no longer desire to be represented by the Exclusively Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon, disinterested third party.

C. An Employee Organization may, in satisfaction of the decertification petition requirements hereunder, file a petition under this section in the form of a recognition petition that evidences Proof of Employee Support of at least thirty (30) percent of the employees in the Appropriate Unit that includes the allegation and information required under paragraph B.3 of this Section 8, and otherwise conforms to the requirements of Section 4 of this Article II.

D. The Employee Relations Officer shall determine whether a petition complies with this Article II. If the Employee Relations Officer determines that a petition does not comply with this Article II, he/she shall offer to consult with the representative(s) of the petitioning employees or Employee Organization and, if his/her determination remains unchanged after that consultation, the Employee Relations Officer shall return the petition to the employees or Employee Organization with a written statement of the reasons for doing so. The petitioning employees or Employee Organization may appeal such a determination pursuant to Sec. 11 of this Article II. If the Employee Relations Officer determines a petition complies with this Article II or his/her contrary determination is reversed on appeal, he/she shall give written notice of that fact to the Exclusively Recognized Employee Organization, to unit employees and to the petitioner(s).

E. The Employee Relations Officer shall arrange for a secret-ballot election to be held on or about fifteen (15) days after such notice to determine the wishes of unit employees as to decertification and, if a recognition petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Sec. 7 of this Article II.

F. When he or she has reason to believe that a majority of unit employees no longer wish to be represented by an incumbent Exclusively Recognized Employee Organization, the Employee Relations Officer may on his or her own initiative give notice to that Exclusively Recognized Employee Organization and to all employees in the Appropriate Unit that he or she will arrange for an election to determine the issue. Within fifteen (15) days of such notice, any other Employee Organization may file a recognition petition in accordance with this Sec. 8, which the Employee Relations Officer shall act on in accordance with this Sec. 8, or seek to be designated as an Exclusive Recognized Employee Organization pursuant to a card-check pursuant to Sec. 3, in which case the provisions of that section shall govern.

G. If, pursuant to Sec. 3 or this Sec. 8, an Employee Organization is acknowledged as the Exclusively Recognized Employee Organization, displacing a prior Exclusively Recognized

Employee Organization, that newly recognized Employee Organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

SECTION 9.0 Policy and Standards for Determination of Appropriate Units

A. The Employee Relations Officer shall have the management discretion to form and define reasonable bargaining units, and to modify bargaining units based on the procedures specified in this resolution. The Employee Relations Officer may consider, but shall not be bound by, labor relations criteria considered under federal authorities such as the National Labor Relations Act. A key criterion for unit determination is whatever grouping provides the broadest feasible grouping of positions that share an identifiable community of interest. In addition, the Employee Relations Officer may consider, but is not limited to, the following criteria:

1. Similarity of general kinds of work performed, qualifications required, and general working conditions.

2. History of representation in the City and similar employment; except however, that no unit shall be deemed to be an Appropriate Unit solely on the basis of the extent to which employees in the proposed unit have organized.

3. Consistency with the organizational patterns of the City.

4. Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.

5. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.

B. Notwithstanding the foregoing provisions of this section, positions occupied by Management, Supervisory and Confidential Employees may only be included in a unit consisting solely of Management, Supervisory or Confidential employees respectively. Management, Supervisory and Confidential Employees may not represent any Employee Organization which represents employees who are not Management, Supervisor or Confidential Employees. Professional Employees shall not be denied the right to be represented separately from nonprofessional employees.

C. The Employee Relations Officer shall, after notice to and consultation with affected Employee Organizations; allocate new classifications or positions; delete eliminated classifications or positions; and retain, reallocate or delete modified classifications or positions from previously designated Appropriate Units in accordance with the provisions of this section.

SECTION 10.0 Request for Modification of Established Appropriate Units

A. Requests by Employee Organizations for modifications of established Appropriate Units shall be considered by the Employee Relations Officer. Such requests shall be submitted in the

form of a Recognition Petition and, in addition to the requirements set forth in Sec. 4 of this Article II, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Sec. 9 hereof. The Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article II.

B. The Employee Relations Officer may on his/her own motion propose that an established Appropriate Unit be modified.

C. The Employee Relations Officer shall give written notice of proposed modifications(s) to any affected Employee Organization and shall hold a meeting concerning the proposed modification(s), at which time all affected Employee Organizations shall be heard. Thereafter the Employee Relations Officer shall determine the composition of the Appropriate Unit or Units in accordance with Sec. 9 of this Article II, and shall give written notice of such determination to the affected Employee Organizations.

D. The Employee Relations Officer's determination may be appealed as provided in Section 11 of this Article II. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, Employee Organizations seeking to become the Exclusively Recognized Employee Organization for a newly designated Appropriate Unit or Units may thereafter file Recognition Petitions pursuant to Sec. 4 of this Article II, or use the card check procedure pursuant to Sec. 3 of this Article II.

SECTION 11.0 Appeals

A. An Employee Organization aggrieved by an Appropriate Unit determination of the Employee Relations Officer may request mediation through the California State Mediation and Conciliation Service within ten (10) business days of notice of the unit determination.

B. Alternatively, within fifteen (15) business days of notice of such a determination, determinations by the Employee Relations Officer concerning: (a) the designation or modification of an appropriate unit; (b) recognition petitions; or (c) decertification petitions may be appealed to the City Council for final decision.

C. Appeals to the City Council shall be filed in writing with the City Clerk, and a copy shall be served on the Employee Relations Officer. The City Council shall commence consideration of the matter within thirty (30) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a third party for hearing, hear the matter itself, or approve such other procedure it deems appropriate to determine the facts and make a final decision. Any decision of the City Council on the use of such procedure, and any decision of the City Council determining the substance of a dispute, shall be final and binding. The failure of any party to file a timely appeal within the time limits specified herein shall constitute a waiver of the right to pursue such appeal.

ARTICLE III - ADMINISTRATION

SECTION 12.0 Submission of Current Information by Recognized Employee Organizations

All changes in the information filed with the City by an Exclusively Recognized Employee Organization under items (a.) through (h.) of its Recognition Petition under Sec. 4 of this Article II shall be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

SECTION 13.0 Payroll Deductions on Behalf of Employee Organizations

The provisions of this Section 13 shall not apply in contradiction of a Memorandum of Understanding or side letter agreed by the City with an Exclusively Recognized Employee Organization prior to July 12, 2010.

A. Only an Exclusively Recognized Employee Organization may be granted permission by the City to have dues or other authorized charges deducted from paychecks of its members, in accordance with procedures prescribed by the City.

B. Dues deduction shall be for a specified amount and shall be made only upon the written authorization of an Employee. Dues deduction authorization may be canceled and the dues check-off payroll discontinued at any time by an Employee upon written notice to the City. Dues deduction authorization or cancellation shall be made available upon forms provided by the City.

C. Should any Employee choose not to join an Exclusively Recognized Employee Organization and therefore not pay dues and other charges, the Employee may be required to pay an agency fee if required by an agency shop agreement between the City and an Exclusively Recognized Employee Organization adopted pursuant to §§ 3502.5 and 3508.5 of the Government Code.

D. An Employee's earnings must be regularly sufficient after other legal and required deductions are made to cover the amount of any dues deduction authorized. When a member in good standing of an Exclusively Recognized Employee Organization is in a non-paid status for an entire pay period, no dues shall be withheld to cover that pay period from future earnings nor shall the Employee deposit the amount with the City which would have been withheld if the Employee had been in paid status during that period. If an Employee is in a non-paid status during only a part of a pay period but the earnings are not sufficient to cover the full withholding, no deduction shall be made. All other legal and required deductions shall have priority over Employee Organization dues.

E. Dues or other charges withheld by the City on behalf of an Exclusively Recognized Employee Organization shall be transmitted to the officer or organization designated in writing by the Exclusively Recognized Employee Organization at the address specified in that designation.

F. All Exclusively Recognized Employee Organizations which receive dues from the City shall indemnify, defend, and hold the City and its officers, agents and employees harmless from and

against any claims made and against any suit instituted against the City, and/or its officers, agents and employees on account of withholding of Employee Organization dues, including but not limited to all costs of defending against any such claims or suits. In addition, all such Employee Organizations shall refund to the City any amounts paid to them in error upon presentation of supporting documentation or other evidence.

SECTION 14.0 Employee Organization Activities – Use of City Resources

Access to City work locations and the use of City-paid time, facilities, equipment and other resources by Employee Organizations and those representing them shall:

A. Be authorized only to the extent provided for in Memoranda of Understanding and/or upon the specific written approval by the Employee Relations Officer;

B. Be limited to lawful activities consistent with the provisions of this Resolution that pertain directly to the employer-employee relationship and not such internal Employee Organization business such as soliciting membership, campaigning for office, and organization meetings and elections; and,

C. Shall not interfere with the efficiency, safety and security of City operations.

SECTION 15.0 Availability of Data

A. The City shall make available to Exclusively Recognized Employee Organizations such non-confidential information pertaining to employer-employee relations as is contained in the public records of the City subject to the limitations and conditions set forth in this Resolution and the California Public Records Act, Government Code §§ 6250 et seq.

B. Such information shall be made available during regular office hours in accordance with the City's rules and procedures for making public records available and after payment of reasonable costs.

C. Information that shall be made available to Exclusively Recognized Employee Organizations includes regularly published data covering subjects under discussion. Data collected on a promise to keep its source confidential may be made available in statistical summaries, but shall not be made available in such form as to disclose the source or otherwise to invade the promised confidentiality.

D. Nothing in this rule shall be construed to require disclosure of records that are:

(a) Personnel, medical and similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;

(b) Working papers or memoranda that are not retained in the ordinary course of business or any records when the public interest served by not making the record available clearly outweighs the public interest served by disclosure of the record;

(c) Records pertaining to pending litigation to which the City is a party, or to claims or appeals that have not been settled; or

(d) Any other records exempt from disclosure under the California Public Records Act or other applicable law.

E. Nothing in this paragraph shall be construed to require the City to do research for an inquirer or to do programming or to assemble data in a manner or to an extent other than usually done by the City or is required by law.

SECTION 16.0 Administrative Rules and Procedure

The Employee Relations Officer is hereby authorized to establish such rules and procedures as appropriate to implement and administer the provisions of this Resolution after consultation with affected Employee Organizations.

SECTION 17.0 Memoranda of Understanding

A. In order to promote transparency in the bargaining process, the following procedures shall govern the conduct of negotiations:

1. As part of the meet and confer process, the initial proposal containing all proposed terms for a successor Memorandum of Understanding with sufficient specificity to support a fiscal impact analysis, shall be exchanged by the Exclusively Recognized Employee Organization and the City and shall be considered a public record and made available for public review with an accompanying City analysis of fiscal impact for each proposal;

2. After the initial proposals are exchanged and made public, negotiations shall continue behind closed doors, unless otherwise agreed to by the parties through written ground-rules waiving this requirement;

3. When the meet and confer process is concluded between the City representatives and an Exclusively Recognized Employee Organization, all matters agreed upon shall be incorporated in a written memorandum of understanding signed by the Employee Relations Officer and authorized representatives of the Exclusively Recognized Employee Organization, which together with the City's written fiscal analysis of the proposed memorandum of understanding, shall be available for public review for a minimum of two weeks prior to the City Council taking action at an open public meeting.

B. A memorandum of understanding is subject to City Council approval and, should the City Council refuse approval of a memorandum of understanding, the parties shall resume good faith negotiations toward agreement.

ARTICLE IV - IMPASSE PROCEDURES

SECTION 18.0 General Provisions

These rules establish specific timelines for the completion of bargaining and any necessary impasse resolution procedures. All deadlines contained herein may be waived by mutual, written agreement. The provisions of this section shall apply only so long as state law requires the parties to proceed to a fact-finding panel (as required by Government Code §§ 3505.4 and 3505.5 when they took effect on January 1, 2012 (or, as amended by AB 1606 signed into law on September 14, 2012).

SECTION 19.0 Initiation of Impasse Procedures

A. Prior to any declaration of impasse, a "last, best and final" offer on wages, hours and working conditions must be submitted as follows:

1. The City representative must present any last, best and final offer of an Exclusively Recognized Employee Organization to the City Council in closed session;

2. The Exclusively Recognized Employee Organization must present any last, best and final offer of the City to its membership within 10 business days of receipt of the last, best and final offer from the City;

B. After consideration of a last, best and final offer, the party shall promptly inform the other party as to whether the offer is accepted or rejected within five (5) business days of the date the last, best and final offer was presented to the City Council or Employee Organization's membership.

C. If a last, best and final offer is rejected, either party may initiate the impasse procedures by filing with the other party a written request for an impasse meeting, together with a detailed statement of its position on all disputed issues, as set forth in the other party's most recent offer, counter-offer or position (which becomes the other party's last, best and final offer). The Employee Relations Officer shall then promptly schedule an impasse meeting. The purpose of such meeting shall be: (a) to review the position of the parties in a final effort to reach agreement on a Memorandum of Understanding; and (b) if the impasse is not resolved, to discuss arrangements for the utilization of the impasse resolution procedures provided in Section 20.

D. Either party has the option to request that the dispute be submitted to mediation. If the parties agree to mediate, the costs of mediation shall be borne equally. Mediation shall be conducted by a mutually agreed upon mediator or a mediator supplied by the California State Mediation and Conciliation Service. Mediation shall be confidential. The mediator shall not make public recommendations or issue any decision concerning the issues.

E. Selection of a Fact-finding Panel Chairperson

To prepare for the possibility that the Exclusively Recognized Employee Organization may ultimately desire to submit the dispute to a fact-finding panel, within five (5) days of either party filing a written request for an impasse meeting, the parties shall mutually agree on a fact-finding chairperson who will certify that he or she will start the fact-finding proceedings (described in Section 20.0) within ten (10) business days of notification by the Exclusively Recognized Employee Organization of a need to do so. If the parties are unable to agree, the City shall request that the California State Mediation and Conciliation Service provide a list of seven (7) qualified fact-finders, and the parties will select a fact-finder from this list who will certify that he or she will start the fact-finding hearing within 10 days of notification by either party of a need to do so. The parties shall confirm the pre-designated chairperson no later than ten (10) days after either party files a written request for an impasse meeting.

SECTION 20.0 Resolution of Impasse

A. Fact-finding Panel

1. Within 30 days of the conclusion of the impasse meeting described in Section 19.0, the Exclusively Recognized Employee Organization may request that the parties' differences be submitted to a fact-finding panel, pursuant to the procedures set forth in Government Code Section 3505.4.

Failure to make a written request to proceed to a fact-finding panel within 30 days of the conclusion of the impasse meeting described in Section 19.0 constitutes a waiver of the ability to proceed to a fact-finding panel.

B. Fact-finding Criteria

1. No later than the first meeting of the fact-finding panel, the Finance Director shall prepare a report on the City's financial condition, including projections of revenues and expenditures for at least three (3) fiscal years.

2. In addition to the statutory criteria set forth in Government Code Section 3505.4 (d)(1–7), the fact-finding panel must consider the impacts of any recommendation which will result in an increased cost to the City, including the impact of that additional expense on the ability of the City to continue to provide services.

C. Fact-finding Report

1. If the fact-finding panel makes findings and recommendations, those findings and recommendations shall be made on an issue-by-issue basis.

2. The fact finding report, in addition to analysis of the criteria listed under Government Code Section 3505.4(d), must include specific consideration of the impacts of any recommendation which will result in an increased cost to the City including the impact of that additional expense on the ability of the City to continue to provide services and its ability to attract and retain employees in light of prevailing labor market conditions.

3. The fact-finding panel shall limit its findings and recommendations to issues that fall within mandatory subjects of bargaining, unless the parties mutually agree, in writing, to submit other issues to the panel.

4. If the dispute is not settled within thirty (30) days of the chairperson's appointment, that panel shall make findings of fact and advisory recommendations for terms of settlement. The fact-finding panel shall submit a written report including findings of fact and recommended terms of settlement to the parties.

5. The parties shall maintain the confidentiality of the fact-finding panel's report for a period of ten (10) days. If the parties do not reach agreement in that time, the City shall make the report available to the public.

D. Costs. Each party shall bear its own costs of fact-finding, including the costs of its advocate(s). Any costs for the fact-finding panel, facilities, court reporters or similar costs shall be shared equally by the parties.

E. Implementation of Last, Best and Final Offer. On or after the date the employer has released the fact-finders' report to the public, the City Council may implement the terms of its last, best and final offer on wages, hours and working conditions after holding a public hearing on the impasse. The public hearing may not be held until conclusion of the 10-day period required by Section 20 C.5.

F. The procedures set forth in this Article IV shall apply only to disputes consistent with the provisions and intent of Government Code Sections 3505.4(d) and 3505.7.

ARTICLE V - MISCELLANEOUS PROVISIONS

SECTION 21.0 Construction

This Resolution shall be construed as follows:

A. Nothing in this Resolution shall be construed to deny to any person, employee, organization, the City, or any authorized officer, body or other representative of the City, the rights, powers and authority granted by Federal or State law.

B. This Resolution shall be interpreted so as to carry out its purposes as set forth in Article I.

SECTION 22.0 Amendment

Proposed amendments to this Resolution are excluded from the scope of meeting and conferring but are subject to consultation with Exclusively Recognized Employee Organizations pursuant to Government Code § 3507.

SECTION 23.0 Severability

If any provision of this Resolution, or the application of such provision to any persons or circumstance, shall be held invalid or unenforceable by any decision-maker with jurisdiction to do so, the remainder of this Resolution, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby and, to that end, the provisions hereof are severable.